APPEAL NO. 030534
FILED APRIL 15, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on October 17, 2002, with the record closing on January 16, 2003. The hearing officer resolved the disputed issue by determining that the appellant's (claimant) impairment rating (IR) is 10%. The claimant appeals this decision. The respondent (carrier) urges affirmance.

DECISION

Reversed and rendered.

The evidence reflects that approximately two years prior to the date of the compensable injury, the claimant suffered atrial fibrillation and several embolic strokes, which resulted in memory loss, vision problems, and numbness on the left side. The claimant recovered to the point that he could return to work, but no longer performed his previous job as a supervisor. On _____, the claimant was gauging oil tanks and fell down the stairs. The claimant testified, and the medical records reflect, that the claimant's poststroke condition became worse after the fall.

A Texas Workers' Compensation Commission-selected designated doctor, Dr. E, was appointed to resolve a dispute regarding the claimant's IR. Dr. E examined the claimant on January 6, 2002, and assigned the following ratings: 5% under the category consciousness and awareness; 62% for visual field impairment; 5% for station and gait impairment; and 4% for loss of dexterity in the left, nondominant upper extremity. The combination of these impairments resulted in a 67% whole person impairment. Dr. E stated in his report:

> Then the next question becomes, how much of this impairment is attributable to the new accident. As discussed above, I believe that it is reasonable to say that there has been a clear decrement in function. I believe that with the absence of new cerebral infarction, I will assign 15% impairment to the new accident to give 10% whole person impairment attributable to this accident. The apportionment of the impairment is a judgment on my part with regard to the history and records that I reviewed.

Subsequent to the hearing, the hearing officer reopened the record and sent a letter requesting clarification to Dr. E, explaining that an IR cannot be apportioned for an aggravated body part and requesting that Dr. E assign an IR without apportioning for the strokes. Dr. E replied that the strokes occurred prior to the compensable injury, but that the claimant's impairment or function declines as a result of the new concussion sustained in the compensable injury. Dr. E again reiterated, "It was my judgment that only a small, 15% of the total impairment should reasonably be assigned to the

accident." Dr. E went on to briefly explain the visual condition homonymous hemianopsia, which he found to be present at the time of the claimant's examination, and, therefore, "included the visual defects in my impairment and then tried to account for the pre-existing stroke with apportionment." Dr. E did not indicate that his whole person IR of 67% was in any way incorrect.

The hearing officer made the following Findings of Fact:

> 2. [Dr. E] assigned a 67% whole body [IR] but apportioned it down to 10%, stating that only 15% of the whole rating was due to the compensable injury.
>
> 3. [Dr. E's] rating assigns 62% whole body impairment for visual field losses.
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> 4. [The claimant's treating doctor] indicates that the visual field loss on the left side was present after Claimant's stroke, unrelated to the fall.
>
> 5. [Dr. E] believes Claimant's condition was worsened by the fall, including the visual field loss.
>
> 6. The great weight of the other medical evidence is not contrary to the report of [Dr. E] assigning a ten percent whole body [IR].

The hearing officer concluded that the claimant's IR is 10%.

In Texas Workers' Compensation Commission Appeal No. 94602, decided June 17, 1994, the Appeals Panel wrote as follows:

> It is well-settled that in rendering an [IR] under the 1989 Act a doctor is to provide a rating only for the compensable injury and, in so doing, the doctor must determine, under his medical judgment, what the compensable injury is. Texas Workers' Compensation Commission Appeal No. 931098, decided January 18, 1994. In Appeal No. 931098, *supra*, we acknowledged that "[w]here the compensable injury in question is to the same area of the body and involves the same type of injury and amounts to an aggravation or exacerbation of an earlier injury or condition, the lines become somewhat blurred." However, we have held that the effects of a prior injury should not be discounted in the assessment of an impairment for a current injury. [Texas Workers' Compensation Commission Appeal No. 931130, decided January 26, 1994]; Texas Workers' Compensation Commission Appeal No. 93695, decided September 22, 1993.

The designated doctor in this case noted that he believed all of the conditions for which

he assigned a rating, including the visual field, were present prior to the compensable injury, but were worsened by the fall. Accordingly, it was error for the hearing officer to adopt the apportioned IR assigned by Dr. E. We reverse Finding of Fact No. 6 and Conclusion of Law No. 3 and render a new decision that the claimant's IR is 67% in accordance with the opinion of the designated doctor.

The true corporate name of the insurance carrier is **FINANCIAL INSURANCE COMPANY OF AMERICA** and the name and address of its registered agent for service of process is

ALBERT SCOTT TAYLOR, PRESIDENT
KENNETH RANDALL BERRY, TREASURER
12225 GREENVILLE AVENUE, SUITE 490
DALLAS, TEXAS 75243.

_____
Chris Cowan
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Terri Kay Oliver
Appeals Judge